

SOAH DOCKET NO. 453-05-7401.P1
SOAH DOCKET NO. 454-06-0508.P1
DWC NO.

LEWISVILLE I.S.D., SELF-INSURED, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	
	§	
TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION AND BILL J. MATHIAS, M.D., Respondents	§	OF
	§	
	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Lewisville I.S.D. challenges Medical Interlocutory Orders issued by the Texas Workers' Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation (the Division), requiring Lewisville I.S.D. to reimburse for medications provided by Co-Respondent Bill J. Mathias, M.D., to Claimant. This decision finds in favor of the Division and Dr. Mathias.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The Medical Interlocutory Orders were issued on May 13, 2005, and October 10, 2005. Lewisville I.S.D. filed timely requests for a hearing. The two cases were consolidated. After proper and timely notice, the hearing was convened November 30, 2006, at the offices of the State Office of Administrative Hearings, with ALJ Henry D. Card presiding. Lewisville I.S.D. and the Division were represented by counsel, who appeared in person. Dr. Mathias participated *pro se*. The hearing was adjourned the same day.

SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.

II. DISCUSSION

The Claimant, a _____, suffered a work-related injury on _____, when she dropped a large pan of boiling water and hot dogs, sustaining a burn to her left ankle. She was treated for the burn and related nerve damage. On May 18, 2001, she was declared at maximum medical improvement (MMI) with a three percent impairment rating. She continued to work, but complains of some residual pain, numbness, and tingling in her ankle.

On November 1, 2004, Dr. Mathias performed electrodiagnostic testing on the ankle, which showed an abnormal result. Dr. Mathias' interpretation of that study was that it was consistent with severe left superficial peroneal sensory neuropathy that selectively involves the medial dorsal cutaneous branch of the nerve. He prescribed the following medications:

- Tramadol 50mg., one 4 times a day as needed-90 day supply
- Gabapentin 100mg., one 3 times a day to treat neuropathic pain
- Disalcid 750 mg, two 2 times a day as needed-90 day supply
- Celebrex 200 mg., 1 time a day as needed-90 day supply.

Lewisville I.S.D. has the burden of proof in this proceeding. TEX. LAB. CODE ANN. §§ 413.055, 28 TEX. ADMIN. CODE § 148.14(a).

Tramadol is an anti-pain medication. Gabapentin is an anti-seizure medication which, as is discussed further below, can be used as an anti-pain medication for nerve-related pain. Disalcid and Celebrex are both anti-inflammatory medications. The medications that were the subject of the first Medical Interlocutory Order included a prescription for Disalcid, the second included a prescription for Celebrex.

In disputing the medical necessity of the medications, Lewisville I.S.D. relied primarily on an examination and testimony by Dr. Peter Foox and a peer review by Dr. Dorothy Leong. Lewisville I.S.D. also provided an initial impairment rating of zero, conducted after an

examination on December 22, 2000, and cited the length of time that had passed since the injury and the fact that the Claimant had continued to work. The Division and Dr. Mathias relied on Dr. Mathias' examination and testing, along with the PRME report. They also cited an observation by one of her earlier treating physicians, Dr. Simpson, in 2001, that "it looks like the deep peroneal nerve has been trapped in scar tissue and it is tender."

Dr. Foox testified that his examination showed only very mild pigmentation at the site of the burn. He could find no objective evidence of injury. He also objected to the use of Gabapentin for pain relief, as it is an anti-seizure medication. Its use for pain relief was an off-label use. He agreed that it was reasonable for Dr. Mathias to have conducted electrodiagnostic tests, in light of the Claimant's ongoing complaints. Dr. Leong, in her peer review, stated the Claimant's symptoms and any neuropathy were unrelated to the Claimant's five-year-old injury.

The peer review physician, Dr. Elamir, found it might be reasonable and medically necessary for Dr. Mathias to prescribe an anti-inflammatory or an analgesic for the Claimant's occasional symptoms. However, his examination found only slightly abnormal pigmentation at the burn site and no other abnormal symptoms.

The testing conducted by Dr. Mathias showed an abnormal result consistent with his diagnosis. That diagnosis was also consistent with Dr. Simpson's observation from 2001. Dr. Mathias testified that a burn could result in scar tissue that could cause a neuropathy. He agreed that the use of Gabapentin for pain relief for nerve injuries was an off-label use, but one supported by medical research.

Dr. Leong's peer review assumed the Claimant's primary injury was a contusion caused by the falling pan. It did not directly address the issue of whether the neuropathy found by Dr. Mathias could have been caused by scar tissue from the burn. Although the ALJ found Dr. Foox to be a credible witness and has no reason to doubt the results of his examination, Dr. Foox did not refute the testing results found by Dr. Mathias.

This is a difficult case in which the evidence could point either way. Considering that Dr. Mathias' diagnosis was based on objective electrodiagnostic testing that was not successfully refuted, the ALJ concludes Lewisville I.S.D. did not meet its burden of proving the prescribed medications were not medically necessary.

III. FINDINGS OF FACT

1. On May 13, 2005, and October 10, 2005, the Texas Workers' Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation (the Division), issued Medical Interlocutory Orders requiring Lewisville I.S.D. to reimburse for medications provided by Co-Respondent Bill J. Mathias, M.D., to Claimant.
2. Lewisville I.S.D. filed timely requests for a hearing.
3. Notices of the hearing were sent July 19, 2005, and December 14, 2005.
4. The notices contained statements of the time, place, and nature of the hearing; statements of the legal authority and jurisdiction under which the hearing was to be held; references to the particular sections of the statutes and rules involved; and short, plain statements of the matters asserted.
5. The two cases were consolidated and the parties notified of the new consolidated hearing date and time.
6. The hearing was convened November 30, 2006, at the offices of the State Office of Administrative Hearings, with ALJ Henry D. Card presiding.
7. Lewisville I.S.D. and the Division were represented by counsel, who appeared in person. Dr. Mathias participated *pro se*. The hearing was adjourned the same day.
8. The Claimant, a [REDACTED], suffered a work-related injury on [REDACTED] when she dropped a large pan of boiling water and hot dogs, sustaining a burn to her left ankle.
9. The Claimant was treated for the burn and related nerve damage.
10. On May 18, 2001, the Claimant was declared at maximum medical improvement (MMI) with a three percent impairment rating.

11. The Claimant continued to work, but complains of some residual pain, numbness, and tingling in her ankle.
12. On November 1, 2004, Dr. Mathias performed electrodiagnostic testing on the ankle, which showed an abnormal result.
13. The electrodiagnostic study was consistent with severe left superficial peroneal sensory neuropathy that selectively involves the medial dorsal cutaneous branch of the nerve.
14. The testing conducted by Dr. Mathias showed an abnormal result consistent with his diagnosis.
15. Dr. Mathias' diagnosis was also consistent with the observations of Dr. Simpson, one of the Claimant's treating doctors, in 2001.
16. Dr. Mathias prescribed the following medications:
 - Tramadol 50mg., one 4 times a day as needed-90 day supply
 - Gabapentin 100mg., one 3 times a day to treat neuropathic pain
 - Disalcid 750 mg, two 2 times a day as needed-90 day supply
 - Celebrex 200 mg., 1 time a day as needed-90 day supply.
17. Disalcid and Celebrex are both anti-inflammatory medications. The prescription that was the subject of the first Medical Interlocutory Order included a prescription for Disalcid, the second included a prescription for Celebrex.
18. A burn could result in scar tissue that could cause a neuropathy.
19. Although the use of Gabapentin for pain relief for nerve injuries is an off-label use, it is supported by medical research.
20. Dr. Leong's peer review assumed the Claimant's primary injury was a contusion caused by the falling pan. It did not directly address the issue of whether the neuropathy found by Dr. Mathias could have been caused by scar tissue from the burn.
21. The medications prescribed by Dr. Mathias for the Claimant were reasonable, medically necessary, and related to her compensable injury.

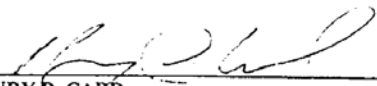
IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
3. Lewisville I.S.D. has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE § 148.14(a).
4. Lewisville I.S.D. did not meet its burden of proving the medications were not medically necessary.
5. Lewisville I.S.D. is not due reimbursement for payments provided for the medications at issue.

ORDER

IT IS THEREFORE, ORDERED that Lewisville I.S.D. shall not be reimbursed for payments made for the medications and other medical services at issue in this case.

SIGNED January 30, 2007.



HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS